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Summary record of the 174th meeting
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Chairperson: Ms. Cisternas Reyes

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The meeting was called to order at 3 p.m.

Expression of sympathy in connection with the crash of Germanwings flight 4U9525

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*

2. **The Chairperson**, on behalf of all the members of the Committee, expressed sympathy to the Government of Germany in connection with the crash of Germanwings flight 4U9525 in the French Alps.

Consideration of reports submitted by States parties under article 35 of the Convention

Initial report of Germany (CRPD/C/DEU/1; CRPD/C/DEU/Q/1 and Add.1)

3. **Ms. Lösekrug-Möller** (Germany) thanked the Chairperson for the expression of sympathy. Introducing her country's initial report (CRPD/C/DEU/1), she said that Germany had first legislated on equal opportunities for persons with disabilities in 1974. In 1994, legal provisions that emphasized inclusion and participation, instead of simply prohibiting discrimination, had been incorporated in the nation's Basic Law. The definition of disability had been further expanded and the transition to a participation-based approach further developed in reforms introduced in the German Social Code in 2001.

4. Those advances had been achieved despite the obstacles that the country had had to overcome with regard to historical perceptions of disability. Many stakeholders and observers nevertheless felt that change was not occurring fast enough. Some also believed that the system of federalism impeded consistency and progress, particularly towards the goal of inclusive education at all levels. However, her Government perceived federalism not as an impediment but as a source of opportunity and incentive. In education, for example, various Länder had amended their legislation to promote inclusion and most aspired to offer a choice between mainstream and special schools.

5. The move towards inclusive education was one of the key areas for action identified in the Federal Government's National Action Plan for the implementation of the Convention. The Plan encompassed more than 200 individual measures and was designed to change attitudes and approaches by mainstreaming disability in all legislative and policy initiatives. The Plan's content had been reviewed by independent experts in 2014 and the resultant report would provide the point of departure for its future development. Persons with disabilities had been involved in the review process from the outset and the government authorities would continue to engage with non-State actors in all areas of society.

6. Other key areas of action under the National Action Plan were work and employment, guardianship and the right to vote. A central aim of the Plan was to bring more persons with disabilities into the general labour market, and the Federal Government was looking to use new technologies and working methods to promote integration and employment sustainability.

7. With regard to guardianship, the aim was to guarantee the right to self-determination by promoting supported, in preference to substitute, decision-making. Under current guardianship law, placing an adult under guardianship was without impact on the legal capacity of the individual concerned, and a person's wishes and preferences were the guide for all action taken on his or her behalf. A study commissioned to assess the efficacy of those provisions in practice would be completed before the end of 2015.

8. To guarantee the right to vote for all citizens, the authorities endeavoured to provide accessible polling stations, assistance and absentee ballots. Persons with disabilities,

including those living in psychiatric hospitals and those under most forms of guardianship, were not denied the right to vote; only persons determined by court order to be unable to make their own decisions were excluded from voting. The Government believed its provisions to be in line with article 29 of the Convention but, following recent debate, had commissioned a study to consider whether the exclusion from voting had been applied too broadly.

9. To further improve the situation of persons with disabilities, the Federal Government was also in the process of drafting a new federal law on participation, which would redefine integration assistance as a participation benefit rather than a welfare benefit. Consultations on the text would be concluded in April 2015 and the new law should be adopted in 2016. The legislative authorities were also working with disability organizations to amend and update the 2002 Act on Equal Opportunities for Persons with Disabilities.

10. **Ms. Bentele** (Germany) said that the national coordination agency responsible for monitoring and supporting implementation of the Convention had identified a number of areas of weakness. It believed that depriving persons under court-ordered plenary guardianship of the right to vote was contrary to article 29 of the Convention and that the prohibition should be repealed prior to the 2017 parliamentary elections. The Government should also take action to ensure effective protection against exploitation, violence and abuse for persons with disabilities, especially women with disabilities, around half of whom were likely to face sexual violence at some point in their lives. Appointing specialized ombudsmen for women and providing empowerment training for girls and women would also help the preventive effort.

11. Its historical focus on separate schooling meant that Germany had considerable ground to make up in the area of inclusive education. The situation was further complicated by the fact that the various Länder were responsible for all general education and university issues and that, as a consequence, there were stark differences from one to another. Shared standards were required to ensure consistency in inclusion policy and resource allocation.

12. Segregation was also a major problem in employment. The coordination agency did not believe that employment in sheltered workshops was the right option for persons with disabilities. Greater awareness of their needs among private sector employers and public authorities was required to enhance opportunities for inclusion in the primary labour market, as well as a reduction in unnecessary red tape. Nonetheless, with its increased emphasis on participation, the Government was moving in the right direction.

13. **Mr. Aichele** (National Monitoring Body for the United Nations Convention on the Rights of Persons with Disabilities, Germany) said that the State party's report lacked depth and did not deal openly with areas of weakness. He hoped that the delegation would compensate for those shortcomings in the course of the dialogue. Specific weaknesses included the persistent segregation in housing, education, work and other areas of life. The State party should focus on the structural changes needed to prevent discrimination and enable persons with disabilities to participate fully in mainstream society. He hoped that the dialogue would provide impetus and encouragement to move the rights of persons with disabilities higher up the political agenda.

14. **Ms. Kingston** (Country Rapporteur) said that, while she welcomed the adoption of the National Action Plan, she remained concerned about the varying levels of implementation of the Convention in the different Länder, the lack of coordination between the Länder and the Federal Government, and the undue fragmentation of laws and policies. Although there had been some legal reforms at the level of the Länder, not all laws were aligned with the Convention and there were no structural guarantees as to the conformity of any new laws that might be passed. Similarly, although most Länder had action plans to implement the Convention, many of those plans did not take a rights-based approach.

15. Further concerns included the segregation of persons with disabilities, the multiple discrimination faced by, for example, migrants and children with disabilities, and the additional marginalization of particular groups, such as persons with autism and persons with psychosocial or intellectual disabilities. Germany had not yet achieved the paradigm shift towards full social inclusion beginning from birth. Almost three quarters of children with disabilities attended segregated schools, those in mainstream schools were taught in separate classes and, in 2012, the majority of secondary school students with disabilities had left without formal qualifications. Over 300,000 persons with disabilities worked in segregated employment or sheltered workshops, where they did not receive the minimum wage, and a lack of incentives meant that few made the transition to the primary labour market. Unemployment was also higher among persons with disabilities, especially women.

16. The high level of institutionalization was another source of concern. Far too little of the budget for disability was spent on providing non-institutional care and the number of persons living in institutions had remained more or less constant for the past decade. Information was needed about efforts at the federal and Länder levels to promote deinstitutionalization and address the practical obstacles to independent living and full participation in the community that persons with disabilities faced.

17. While she welcomed the reforms to German guardianship laws, she believed that more remained to be done in order to fully replace substitute decision-making with supported decision-making, in line with the Committee's general comment No. 1. Within the judicial system, work was also required to guarantee an accessible environment for persons with psychosocial or intellectual disabilities.

18. Lastly, she invited the delegation to comment on reports of obstacles to participation in sport and leisure, and, specifically, reports that wheelchair users were not permitted to participate in the Berlin marathon on equal terms, and also on reports that, despite the existence of federal structures to monitor implementation of the Convention, some Länder had not appointed specific focal points and the relevant administrative units were underfunded.

Articles 1–10

19. **Mr. Tatić** asked whether the draft amendments to the Act on Equal Opportunities for Persons with Disabilities made reasonable accommodation mandatory in the private as well as the public sector and expressly defined denial of such accommodation as a form of discrimination. In that connection, it would be useful to have data about the number of court cases brought for denial of reasonable accommodation or intersectional discrimination against persons with disabilities. He would also like information about the monitoring mechanisms used to ensure compliance with accessibility standards and the penalties imposed on entities — particularly private entities — that failed to respect those standards. Lastly, he would welcome the delegation's comments on Lufthansa's practice of insisting that persons with disabilities should be seated next to a window on its aircraft. Was that policy, which ran counter to article 5 of the Convention, still implemented?

20. **Mr. Kim** Hyung Shik asked whether the Government had encountered any unexpected difficulties in carrying out the vast range of measures envisaged in the National Action Plan for the implementation of the Convention, whether there had been any unintended consequences and what implications, if any, the recent cut of 5 billion euros to the budget of the Federal Ministry of Labour and Social Affairs might have for the Plan's implementation. Noting the large number of migrants living in Germany, he asked whether data about refugees and migrants with disabilities had been compiled, and to what extent such persons had access to rehabilitation and other health-care services.

21. **Ms. Quan-Chang** asked whether the National Action Plan included provisions for harmonizing the various definitions of "disability" in legislation at the federal and Länder levels. She also wished to know what criteria were used to determine what constituted reasonable accommodation.

22. **Mr. Langvad** asked whether the State party had a concrete plan for deciding on a clear legal definition of "reasonable accommodation". He enquired whether studies had been conducted to determine the extent to which persons with disabilities in Germany were able to exercise their right to live independently and be included in society, what progress was being made in that area and how the situation in Germany compared to that in other countries. He asked whether the definition of "disability" included psychosocial disabilities. Did the State party intend to ratify the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled and incorporate its provisions in national legislation? What steps was it taking to incorporate the provisions of the Convention on the Rights of Persons with Disabilities in its legislation? Lastly, what types of support did the State party provide to NGOs representing persons with disabilities?

23. **Ms. Pavey** asked what measures the State party was taking, or intended to take, to incorporate a social approach to disability in its anti-discrimination policies, whether there was any jurisprudence relating to the recognition of hate speech targeting people with autism as a crime and whether additional measures to enhance public awareness of autism-related issues were planned, given that there seemed to be little progress in that area.

24. **Mr. You** Liang requested further information on the collection of data on persons with disabilities.

25. **Ms. Peláez Narváez**, referring to the concluding observations of the Committee on the Elimination of Discrimination against Women on the sixth periodic report of Germany to that body (CEDAW/C/DEU/CO/6), in which the State party had been encouraged to mainstream the issues of women with disabilities in its employment policies and programmes, asked how the State party had acted on that recommendation. She requested information on policies to assist migrant women with disabilities and on the impact of female genital mutilation on women and girls with disabilities in Germany and efforts to counter that practice.

26. Regarding the situation of children with disabilities, she asked what steps had been taken to implement the recommendations made in paragraphs 51, 53 and 55 of the concluding observations of the Committee on the Rights of the Child on the combined third and fourth periodic reports of Germany to that body (CRC/C/DEU/CO/3-4). The recommendations had concerned access to inclusive education, protection of girls with disabilities from violence and support for children with disabilities from migrant families.

27. She enquired whether studies had been conducted in Germany on disabilities that intersex children might suffer as a consequence of castration or female genital mutilation.

28. **Mr. Buntan** asked to what extent the State party promoted the use of the universal design approach in mainstream technology development. Applying that principle would ensure that the resulting technology was accessible to all. He also wished to know whether the State party, in subsidizing the development of assistive technologies, was changing its emphasis from cost-effectiveness to respect for individual rights and recognition of reasonable accommodation.

29. He enquired whether the State party was expanding its efforts to eliminate disability-based discrimination, which were currently focused on the spheres of employment and vocational training, to other areas.

30. **Mr. Babu**, referring to an awareness-raising campaign launched by the State party to promote positive perceptions of persons with disabilities, said that he questioned whether it was appropriate to describe disabilities as "curable", as was done in the title of the

campaign. He asked whether the National Action Plan for the implementation of the Convention would be extended once it had run its course.

31. **Mr. Basharu** said that, while the State party was to be commended for recognizing sign language as a separate language, reportedly television broadcasters in Germany sometimes failed to provide sign language interpretation because of the supposedly small proportion of viewers requiring it. What steps might the State party take to remedy the situation?

32. He asked the delegation to comment on the statement in paragraph 35 of the report that anti-discrimination legislation permitted persons with disabilities to be treated differently from those without disabilities if there was an objective reason for doing so, such as avoiding risks.

33. **Ms. Kingston** asked how persons with disabilities living in Germany were enabled to participate in a meaningful and effective way in decision-making that affected them. How did the State party clarify the roles and responsibilities of persons with disabilities with regard to the Convention's implementation?

34. It was regrettable that some government-funded measures to protect women, including those with disabilities, from violence had been discontinued and that, furthermore, the relevant services were in many cases inaccessible to women with disabilities.

35. She asked how the State party was striving to reduce the stigmatization of persons with disabilities, especially intellectual or psychosocial ones, and whether public officials whose duties included assisting persons with disabilities received relevant training.

36. **The Chairperson**, speaking in her personal capacity and referring to the concluding observations of the Committee on the Rights of the Child on the latest periodic reports of Germany to that body, asked whether the recommendation to ensure that children with disabilities and their families had a say in deciding whether the child should attend a special school had been followed up on. She asked why there was no action plan regarding persons with disabilities in Saxony.

The meeting was suspended at 4.25 p.m. and resumed at 4.50 p.m.

37. **Mr. Giese** (Germany), said that the Convention's provisions as a whole had been incorporated in national legislation. His Government was considering how to amend specific laws through explicit references to reasonable accommodation. For example, the Federal Ministry of Labour and Social Affairs was amending the Act on Equal Opportunities for Persons with Disabilities accordingly. His Government was of the view that, generally speaking, reasonable accommodation should be based on the circumstances of individual cases, though of course legislation should have a broader scope.

38. **Mr. Richard** (Germany) said that some Länder had reproduced the definition of "disability" contained in the Convention in their legislation, others used slightly diverging definitions and still others were waiting for the Federal Act on Equal Opportunities for Persons with Disabilities to be updated before deciding on the matter.

39. **Ms. Wurster** (Germany) said that the German Ethics Council had recently issued recommendations for improving the situation of intersex and transsexual persons in Germany and that the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth had held a dialogue on the matter with NGOs. Under new legislation, people did not need to specify their gender for the purposes of administrative procedures; that would, it was hoped, reduce pressure on parents to have sexual reassignment surgery performed on children. An interministerial working group on intersex and transsexual people was examining the recommendations of the Ethics Council in detail and soliciting input on them from organizations representing the persons concerned. National legislation would be amended if necessary.

40. **Ms. Brunozzi** (Germany) said that her Government's efforts to take into account the views of all stakeholders were complicated by the fact that many people with disorders of sex development did not view themselves as having a disability. It was her Government's understanding that doctors in Germany were becoming increasingly reluctant to perform early sexual reassignment procedures, and the guidelines drafted by the working group, which were expected to be adopted in 2015, recommended against early reassignment.

41. **Mr. Morten** (Germany) said that his Government was complying with European Union legislation regarding accessibility. Although compliance by the private sector was harder to secure than public-sector compliance, targets for private firms had been set and some regulations were already in place. For example, starting in 2016, all long-distance buses would have to accommodate wheelchairs. In addition, one could see changes in the private sector in response to market demands. The tourism industry, for example, was increasingly sensitive to the requirements of potential customers with disabilities. The Government could assist industries with compliance; an example was a labelling project sponsored by the Federal Ministry for Economic Affairs and Energy under which hotels and restaurants could indicate that their premises were accessible to people with disabilities. While much remained to be done to achieve full compliance by the private sector with the Convention's accessibility provisions, his Government was working towards that goal.

42. **Mr. Necke** (Germany) said that the National Action Plan for the implementation of the Convention covered a 10-year period. An evaluation of the Plan by experts in 2013 had revealed several noteworthy flaws: the definition of "disability" in the Plan needed to be clearer, indicators and targets needed to be better defined, and greater focus was needed on horizontal aspects and on monitoring and follow-up. The Plan would be refined further in cooperation with civil society and in the light of the Committee's forthcoming recommendations.

43. **Mr. Dusel** (Germany) said that most Länder had action plans relating to people with disabilities. Saxony had not adopted such a plan but was expected to do so by the end of 2015.

44. **Mr. Schmachtenberg** (Germany) said that the overall budget allocation for persons with disabilities had not been cut, as had been suggested; in fact, a sum of 5 billion euros had been set aside from the budget to fund the implementation of the proposed new federal law on participation.

45. Migrant workers and refugees with disabilities had access to the health-care system and to employment-related benefits. However, persons whose status had yet to be determined and who had been in Germany for less than 15 months received only the benefits granted them under the law on benefits for asylum seekers. His Government was implementing Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, under which refugees who were particularly at risk must be given access to additional health services.

46. Data on disability was collected by the Federal Statistical Office and through microcensuses. The Robert Koch Institute performed surveys and collected data on the health-care system, and further information was provided by social security bodies. There were plans to carry out a large-scale survey that would provide more detailed information on persons with disabilities by 2020.

47. **Mr. Giese** (Germany) said that his Government was considering amending the definition of "disability" contained in Book IX of the Social Code to bring it more fully into line with the Convention. With regard to psychosocial disabilities, national legislation did indeed provide a legal basis for their recognition.

48. **Mr. Morten** (Germany) said that it was still unclear whether the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or

Otherwise Print Disabled would be ratified by the European Union or by individual member States. However, national legislation already provided for such access.

49. **Ms. Knospe** (Germany) said that a review had found national legislation to be in line with the Convention, in principle. Moreover, the Federal Constitutional Court had ruled that courts must always bear the Convention in mind when interpreting national statutes. The Federal Government intended to make further legislative amendments in order to improve the implementation of the Convention in practice. Financial measures would be introduced to enable persons with disabilities to participate more fully in society.

50. **Mr. Fischels** (Germany) said that no data was available on cases of discrimination against persons with autism. However, work was carried out to counter such discrimination. Companies were encouraged to employ persons with autism and training programmes had been put in place for such individuals.

51. Organizations of persons with disabilities were independent, formulated their own interests and represented themselves, but that did not preclude the Government, or the Länder and municipalities, from assisting them. Indeed, such organizations received significant financial support. Furthermore, the Act on Equal Opportunities for Persons with Disabilities had been designed, in part, to promote the participation of representative organizations.

52. **Mr. Richard** (Germany) said that representative organizations were involved in the work of advisory councils at the level of the Länder and municipalities, as well as taking part in the drafting of programmes and legislation.

53. **Ms. Wurster** (Germany) said that a survey published in 2012 had shown that women with disabilities, particularly those with multiple disabilities, were especially vulnerable. Work was under way to assess discrimination against hard of hearing women. Shelters and telephone hotlines continued to exist across Germany for women affected by violence. In addition, websites had been created using German sign language and easy-to-read formats, and a 24-hour, multilingual federal hotline on violence against women had been set up in order to better serve women with disabilities. In 2014, there had been a significant increase in the number of persons using the relevant services.

Articles 11–20

54. **Mr. Tatić**, reverting to the issue of the Marrakesh Treaty, asked whether it would be useful for the Committee to address the question of shared competences between the European Union and its member States relating to the ratification of the Treaty when the initial report of that body was considered.

55. He would appreciate information on the training provided for members of the judiciary with regard to disability-based discrimination, the Convention and the rights of persons with disabilities.

56. **Mr. Langvad** asked what steps had been taken to incorporate the absolute prohibition on forced or non-consensual psychiatric interventions in domestic legislation and what the State party was doing to recognize the harm caused by forced treatment. Had a compensation mechanism been established and, if so, had there been any cases of compensation being awarded for harm caused by forced or non-consensual treatment?

57. He asked whether persons with disabilities could choose where they wished to live and receive the assistance they needed at that location, or whether they had to live in special institutions or accommodation in order to benefit from support. Lastly, he enquired whether assistance for persons with disabilities was provided free of charge.

58. **Ms. Quan-Chang** said that, in its report, the State party asserted that persons with disabilities enjoyed full legal capacity. However, the fact that there was a law on guardianship on the statute books, under which a third person could be designated as a

representative, contradicted that claim. There had been cases where the wishes of persons with disabilities relating to such issues as their choice of representative or the provision of medical treatment had been ignored. The State party should consider replacing the current guardianship regime with a system of supported decision-making.

59. The high number of cases in which the courts had placed persons with disabilities in institutions without their consent was a cause for concern. The State party should explain what steps it was taking to halt the practice of court-ordered institutionalization.

60. Certain types of psychiatric treatment, including chemical and electroconvulsive therapies, considered by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to constitute torture continued to be imposed on persons with disabilities. She asked what the State party was doing to prevent the use of such treatments and whether a monitoring mechanism had been set up for that purpose.

61. Lastly, she enquired whether the State party intended to set up an independent authority to monitor facilities and programmes for persons with disabilities in order to prevent the occurrence of exploitation, violence and abuse, as called for in article 16, paragraph 3, of the Convention.

62. **Mr. Buntan** asked whether the State party had disaster risk reduction plans at both the federal and Länder levels that were comprehensive and inclusive of and accessible to persons with disabilities, and whether persons with disabilities, particularly hard of hearing persons, had equal access to the emergency call system.

63. **Ms. Peláez Narváez** said that the delegation had yet to respond to her previous questions. She asked how the State party took into account the best interests of children with disabilities and how it ensured that they could voice their opinions on issues directly affecting them. She enquired what steps had been taken to ensure that girls with disabilities who were victims of physical, psychological or sexual abuse had access to justice and enjoyed protection, and to what extent disability was reflected in data on the trafficking of women for purposes of sexual exploitation or labour.

64. She wished to know what measures the State party had taken to end female genital mutilation affecting women with disabilities, including forced sterilization, which, national legislation notwithstanding, continued to be performed on those with intellectual and psychosocial disabilities and deaf-blind women and girls. The State party should also explain when and how it was going to halt forced abortions on women with disabilities, particularly members of the categories just listed.

65. She asked how the State party ensured that migrants with disabilities and children with disabilities born of migrant mothers enjoyed the same access to services as German citizens with disabilities.

66. **Ms. Kingston** said that her previous questions on awareness-raising relating to persons with intellectual and psychosocial disabilities and training for public officials involved in the promotion and protection of the rights of persons with disabilities had not yet been answered.

67. The situation in the State party relating to guardianship and substitute decision-making was unclear. In that connection, it would be helpful to know whether the State party was providing training on the Committee's general comment No. 1 for public officials, judges, social workers, health personnel and other actors.

68. She was concerned about the physical and communication accessibility of courts and other bodies involved in administering the law. Further details on legal assistance for persons with disabilities, legal aid and low threshold advice services would be welcome, as would information on complaint facilities. She also wished to know whether there were requirements to enforce the standards of the Convention within the legal system and in court rulings.

69. She asked whether judicial and prison officials had received training on the application of human rights standards and whether legal practitioners had benefited from training on the Convention.

70. The widespread practice of involuntary placement of persons with psychosocial disabilities in institutions gave cause for concern. The State party should provide data in that regard, along with information on the financial resources provided for community-based outpatient services for persons with intellectual or psychosocial disabilities.

71. She wished to highlight the issue of human rights violations in psychiatric institutions and older persons' care settings involving the use of physical restraints. Lastly, she wondered whether the State party intended to introduce legal reforms to strengthen social assistance services in order to enable persons with disabilities to live in the community if they so chose, and to be included, without facing additional financial barriers.

72. **Mr. Kim** Hyung Shik said that, looking at paragraph 148 of the State party report, it seemed that there was some confusion over the concepts of "integration" and "inclusion".

73. **The Chairperson**, speaking in her personal capacity, said that she would appreciate clarification on the issue of "reservation of consent" (*Einwillingungs-vorbehalt*), whereby persons who nominally had full legal capacity were only able to exercise that capacity with the consent of a custodian. Additional information on how legal proceedings were adapted to take into account various forms of disability would also be welcome.

74. She asked whether persons with real or apparent disabilities who had been deemed to constitute a danger to themselves or to others could be placed in detention and whether guarantees of due process were applied to persons with disabilities, in particular psychosocial or intellectual disabilities, alleged to be involved in criminal offences. Lastly, she asked whether detention facilities in the State party were equipped to hold persons with disabilities, whether reasonable accommodation was made for such detainees and whether rehabilitation services were available to them.

The meeting rose at 6.10 p.m.